

REMARKS/ARGUMENTS

Claims 1-13 are pending herein. Claims 1, 3, and 13 have been amended as supported by page 36, lines 11-27 of the specification, for example. Claims 2 and 4 have been amended in light of the amendments made to claims 1 and 3.

Examiner Forman is thanked for courtesies extended to Applicants' undersigned representative during a telephonic interview on June 19, 2007. The substance of that interview has been incorporated into the following remarks.

During the telephonic interview, Examiner Forman agreed that the amendments made to claim 1 would overcome the art of record. Examiner Forman is respectfully requested to note that independent claims 3 and 13 have been amended in a similar manner.

Applicants' respectfully submit that the finality of the present Office Action is incorrect and should be withdrawn. The PTO asserts, in Section 7 on page 5 of the present Office Action that "Applicants' submission of an Information Disclosure Statement under 37 CFR 1.197(c) with the fee set forth in 37 CFR 1.17(p) on 22 September 2006 prompted the new ground(s) of rejection presented in this Office Action." The PTO is respectfully requested to note that the Information Disclosure Statement filed on September 22, 2006 was correctly filed with a Certification under 37 CFR 1.197(e) asserting that each item listed in the IDS was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing date of this IDS. Accordingly, no fee as set forth in 37 CFR 1.17(p) was required. As provided for in MPEP §609.04(b)(II)(A)(1), a final rejection is not appropriate if information submitted during the period set forth in 37 CFR 1.197(c) with a statement under 37 CFR 1.197(e) is used in a new ground of rejection on unamended claims. Therefore, reconsideration and withdrawal of the finality of the present Office Action is respectfully requested.

1. Claims 1-13 were rejected under §102(e) over Sukla. To the extent this rejection may be applied against the amended claims, it is respectfully traversed.

Amended independent claims 1, 3 and 13 each recite, in relevant part, a biochip comprising a plurality of spots of capture material arranged on a base plate obtained by supplying a plurality of types of capture solutions. Claim 1 recites that the plurality of spots have different spot sizes formed on the base plate and all of the spots have uniform detection sensitivity. Claims 3 and 13 recite that the plurality of spots have varying concentrations of the capture material in the capture solution, and all of the spots have uniform detection sensitivity.

Sukla discloses, in Figs. 5a and 5b, a microchip including spots that vary in terms of compositions and concentrations. Sukla discloses, in Fig. 6, that each of the compositions/concentrations (i.e., K1, K2, K3 and K4) have a reflection intensity that differs greatly from the reflection intensity of the other compositions/concentrations. In other words, while Sukla discloses that a single microchip can contain differing compositions/concentrations, there is no disclosure or suggestion within Sukla that the respective reflection intensity for each of the varying compositions/concentrations can be made to have the same reflection intensity.

For at least the foregoing reasons, Sukla fails to disclose or suggest a biochip wherein the plurality of spots have different spot sizes formed on the base plate, and all of the spots have uniform detection sensitivity, as recited in claim 1. Further Sukla fails to disclose or suggest a biochip wherein the plurality of spots have varying concentrations of the capture material in the capture solution, and all of the spots have uniform detection sensitivity, as recited in claims 3 and 13. Since claims 2, 5, 6, 9 and 10 depend either directly from claim 1, and claims 4, 7, 8, 11 and 12 depend either directly or indirectly from claim 3, those claims are also believed to be allowable over the applied prior art. Accordingly, reconsideration and withdrawal of the present rejection are respectfully requested.

2. Claims 1-13 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-13 of U.S. Patent No. 6,753,144. Applicants respectfully request that the present rejection be held in abeyance until all of the prior art-based rejections have been withdrawn.

If Examiner Forman believes that further contact with Applicants' attorney would be advantageous toward the disposition of this case, she is herein requested to call Applicants' attorney at the phone number noted below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-1446.

Respectfully submitted,

June 28, 2007

Date

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